STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

RAMONA TEACHERS ASSOCIATION, Charging Party,	)	Case No. LA-CE-2066
v.	)	PERB Decision No. 517
RAMONA UNIFIED SCHOOL DISTRICT, Respondent.	)	August 15, 1985

Appearances; Charles R. Gustafson, Attorney for Ramona Teachers Association; Parham & Associates, Inc., by James C. Whitlock for Ramona Unified School District.

Before Hesse, Chairperson; Morgenstern and Burt, Members.

DECISION

MORGENSTERN, Member: This case is before the Public Employment Relations Board (PERB or Board) on an interlocutory appeal by the Ramona Unified School District (District) of a decision by a PERB administrative law judge (ALJ) finding that deferral to an arbitrator's award is inappropriate because such award is repugnant to the purposes of the Educational Employment Relations Act (EERA or Act).[1]

PROCEDURAL SUMMARY

On October 11, 1983, the Ramona Teachers Association (Association or RTA) filed an unfair practice charge (LA-CE-1855) alleging that, on September 6, 1983, the District unilaterally

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

changed the wages, hours and terms and conditions of employment of certain certificated employees. A complaint was issued by a PERB regional attorney on November 10, 1983, finding that the allegations set forth in the charge constituted a prima facie violation of EERA section 3543.5(b) and (c).[2] Thereafter, the District requested that the matter at issue be resolved through the parties' negotiated arbitration procedures and, on January 12, 1984, a PERB ALJ granted the District's motion to defer.

Arbitrator Donald T. Weckstein conducted a hearing on the matters raised by the charge and issued his decision on August 29, 1984.

On October 9, 1984, RTA filed the instant charge, Case No. LA-CE-2066, seeking to revive portions of its prior charge, Case No. LA-CE-1855, claiming that the arbitrator's decision was repugnant to the Act.

A second PERB ALJ reviewed the parties' contentions and, on March 27, 1985, issued a proposed decision in which he found that, in certain respects, the arbitrator's decision was

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[2]Section 3543.5 provides, in pertinent part:

> It shall be unlawful for a public school employer to:
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> . . . . . .
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> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

deficient. He concluded that the arbitrator's award was repugnant to the Act, making deferral inappropriate. He ordered that a complaint should issue.[3]

Thereafter, the District requested that the ALJ permit an interlocutory appeal to the Board itself on the repugnancy issue. On April 17, 1985, the ALJ granted the District's request and certified the issue to the Board, staying further proceedings on the unfair practice case.

Thus, the issue before the Board in the instant case is whether deferral to the arbitrator's decision is appropriate.

FACTUAL SUMMARY

On September 6, 1983, the District school board adopted several items from the 1983-84 Proposed Budget Recommendations. Among those items to which RTA voiced objections were the reassignment of a librarian, "vacating" the positions of site coordinator, and reassignment of a full-time program specialist. In a letter to District Superintendent B. Ingram dated September 8, 1983, RTA President Michael Harrelson advised that the District must negotiate items which substantially alter working conditions and salary. As he saw the above-delineated changes as having such an effect, Harrelson "demand[ed] to negotiate the impact of the 1983-84 Proposed Budget Recommendations . . . ."

3Such was issued by the general counsel on March 27, 1985.

Again, on September 19, 1983, Harrelson wrote to Ingram concerning the school board's action. That document sets forth in detail RTA's understanding of the board's changes as they affect individual employees. In summary, the changes outlined were as follows:

1. Full-time Program Specialist Debbie Burke reassigned to classroom vacancy with salary reduction for 1984-85 school year.

2. Debbie Kazmer, Linda Aubery, Michael Harrelson and Penny Annicharico removed from positions as special education site coordinators with salary reduction beginning October 1, 1983.

3. Director of State and Federal Projects Robert Cook, teacher on special assignment, reassigned to a first grade classroom. No salary reduction contemplated.

4. Position of coordinator of fine arts, held by Lorraine Alperson, reduced to resource teacher. Manner of evaluation changed and salary reduced beginning 1984-85 school year.

5. Coordinator of general curriculum Princess Ruck, teacher on special assignment, moved into a managerial position.

6. Librarian (unnamed) at Ramona Intermediate School reassigned to classroom teacher vacancy at same school. Vacancy to be filled by classified employee.

7. Coordinator of special education Joe Annicharico, teacher on special assignment, moved into managerial position.

8. District bilingual coordinator Carol Van Houten reassigned to English as a second language classroom with salary reduction to begin in 1984-85 school year.

9. Bargaining unit employees serving more than one site to be evaluated by principal at each site rather than one supervisor.

Ingram responded to Harrelson's letter on September 26, 1983, and took issue with some of RTA's understandings as to the ramifications of the board's action. Still convinced that the school board's action was improper, RTA filed its first unfair practice charge in October. On November 10, 1983, PERB issued a complaint which essentially reiterated the specifics as listed in RTA's letter to Ingrain.

Thereafter, in response to the issuance of the complaint, the District made a request that the case be deferred to arbitration. Upon review, the PERB ALJ determined that the issues remaining between the parties be arbitrated. Pursuant to this determination, the charge was dismissed and the dispute proceeded to arbitration.

The arbitrator listed the following issues as those before him:

1. Was the District prohibited by law or by agreement of the parties from vacating the positions of (a) Four Site Coordinators, (b) the Program Specialist, (c) the Director of State and Federal Projects?

2. Was the District prohibited by law or by agreement of the parties from transferring the Librarian position at the Intermediate School from certificated to classified status?

3. Did the District deny to the Association the right to bargain over the effects of its decisions?

4. If any violations of law or agreement by the District are found, what shall the remedy be?

The arbitrator's decision contains a lengthy analysis of these issues, including a detailed review of relevant PERB case law.

The arbitrator first considered EERA's scope of representation language as well as the Board's decision in Anaheim Union High School District (1981) PERB Decision No. 177. With regard to the District's actions at issue here, he continued:

> . . . PERB has held that even though the creation of a new work classification or the abolition of an existing one are related to the wages, hours, and terms and conditions of employment in the new classification and to those of employees transferred and reassigned out of existing classifications, management has an overriding interest in determining which of its functions are necessary to the accomplishment of its mission and which functions no longer serve its purposes and should be eliminated. Therefore, such actions were considered managerial prerogatives and not subject to negotiation. As stated by PERB: "We conclude that where management seeks to create a new classification to perform a function not previously performed or to abolish a classification and cease engaging in the activity previously performed by employees in that classification, it need not negotiate its decision." Alum Rock Union Elementary School District, PERB Decision No. 322 (1983) at 11. PERB went on to hold, however, that the transfer of existing functions and duties from one classification to another does not involve an overriding managerial prerogative and, as transfers of

> work between employees or groupings of employees, or transfers of work out of the bargaining unit, such decisions subject to negotiation. . . .

Having reviewed relevant PERB precedent, the arbitrator examined the District's conduct herein.

> When these principles are applied to the facts in the instant matter, it appears that the District was within its management prerogatives in eliminating the positions of Program Specialist, Site Coordinator, and Director of State and Federal Projects, however, to the extent that the work previously performed by the incumbents of the Program Specialist and Site Coordinator positions was transferred to other employees within the unit or to managerial employees outside of the unit, the decision becomes one subject to negotiation. If the Director of State and Federal Projects, while temporarily held by a certified unit teacher-on-assignment, was a managerial one, its elimination or consolidation with the work of an existing or newly created managerial position would not give rise to a bargaining obligation.
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> Part of the work previously performed by the Site Coordinators, was, according to the District, no longer necessary and simply eliminated because the reorganization eliminated the "school within a school" concept whereby special education programs within each school site were coordinated by a Site Coordinator under the authority of a central special education supervisor. Under the present organization the Site Principal, working under his or her normal line supervisor, has responsibility for special education as well as other educational programs within his or her school. Nevertheless, the Association's evidence indicated that many of the functions previously performed by Site Coordinators were continued to be performed by at least three of the four previous incumbents in their current capacities as full-time special education teachers, or by other teachers and counselors

> within the bargaining unit, or by the Site Principal. Thus, the decision to eliminate the Site Coordinators did have an impact upon the working conditions of unit employees.
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> . . . . . .
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> While the incumbent Program Specialist continued to perform some transition functions, for which she continued to receive compensation, her functions were apparently absorbed by counselors, within the bargaining unit, and management officials not within the bargaining unit. Under either interpretation, the transfer of these functions did impact upon hours and working conditions of bargaining unit employees, as previously explained in the PERB holdings, and would have been subject to negotiation upon request of the Association.
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> The other position affected, that of Librarian at the Intermediate School also involved a transfer from an existing certificated position within the bargaining unit to a classified position out of the bargaining unit. Regardless of the status of the temporary incumbent as a substitute teacher or librarian, PERB decisions make clear that the transfer of the functions of this position from within the unit to out of the unit was subject to negotiation upon request.

To sum up, the arbitrator determined, relying on his analysis of PERB precedent, that the District's bargaining obligation was as follows:

A. While the District exercised its managerial prerogative to eliminate the positions of program specialist, site coordinator and director of state and federal projects, it was obligated to negotiate to the extent that the work (previously performed by the program specialist and site coordinator) was transferred to other employees within the unit or to managerial employees outside the unit.

B. The District was obliged to negotiate the transfer of the librarian position from a bargaining unit position to a classified position outside the unit.

Having so concluded, the arbitrator considered the scope of RTA's demand to negotiate. He first noted that:

> . . . even if the various personnel actions taken by the District on September 6, 1983 in eliminating positions and determining its staffing levels and levels of service in accordance with its fiscal limitations were regarded as management prerogatives and not subject to negotiation with the association, the impact of such decisions are clearly subject to the meet and negotiation process, upon request of the Association. . . .

He next reviewed the precise nature of RTA's requests.

> While there was some testimony at the hearings and some assertions made by the Association's representives [sic] that they had demanded to bargain on the actions themselves taken by the District on September 6, 1983, it is unclear whether these were in fact demands to bargain or were simply objections to the actions being taken, as they were sometimes characterized, or whether the Association specifically sought to bargain over the decisions themselves rather than their impact on represented personnel in the unit. Since the memorandum of September 8, 1983, specifically refers to a demand to negotiate "the impact" of the actions taken, it is likely that the specific request to bargain made by the Association was directed to the impact of the actions taken on September 6. This conclusion is supported by the statement of the issues in the Association's Post-hearing Brief as: "Was the Association denied the right to bargain the effects and impact of the District's Decisions?"

The arbitrator rejected the District's argument that:

> . . . it should be relieved of any such obligation because the union has failed to

> present any proposals addressed to the reasonably foreseeable adverse affects, if any, of the District's September 6th actions.
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> . . . . . .
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> The law, as interpreted by PERB and the courts, however, does not impose any obligation on the Association to make specific proposals but only requires that it make clear its desire to negotiate over the impact of the District's action. See Newman-Crows Landing Unified School District, supra, at 7-8 where PERB found that the bargaining representative only requested to negotiate a layoff decision itself but not the effects of the layoff, and noted that "while it is not essential that a request to negotiate be specific or made in a particular form, . . . it is important for the charging party to have signified its desire to negotiate to the employer by some means. . . . In other words, a valid request will be found, regardless of its form or the words used, if it adequately signifies a desire to negotiate on a subject within the scope of bargaining."
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> In the instant case, the converse facts appear to be established by the evidence. That is, that the Association did not make clear its desire to negotiate the management actions themselves, but did make clear its desire to negotiate the effects of them upon matters within the scope of bargaining. . . .

After a lengthy analysis, the arbitrator concluded:

> Accordingly, it is further concluded that the District in the instant matter has violated the rights of the Association and the employees it represents by refusing to meet and negotiate with the Association regarding the impact and effect of the District's September 6, 1983 actions vacating or eliminating the Site Coordinator, Program Specialist, and Director of State and Federal Projects positions and assigning some or all of the functions of those positions to other personnel within the District, and removing the Librarian position at the Intermediate School from a certificated unit to a classified position. . . .

The gravamen of the Association's repugnancy claim rests on the inadequacy of the arbitrator's remedy. Specifically, the arbitrator found:

> . . . It is not an appropriate remedy, however, to order that the various Grievants be reinstated to the positions from which they were removed by the challenged personnel actions. . . . the District's management prerogatives included the right to determine the level of services and number of positions that it would authorize and fill to perform such services. Since it was further held that the Association is only entitled to an order requiring the District to meet and negotiate regarding the impact of these decisions, rather than the decisions themselves, it would invade the prerogatives of the District for the Association to propose that the District be required to reinstate the employees in positions now vacated or eliminated by its authorized actions. . . .

He also concluded as follows:

> Since the District has been found to have violated the Association's and the Grievants' statutory rights to negotiate the impact of the personnel actions challenged herein, and since the Grievants' negotiated benefits and professional advantages may have been reduced or eliminated as part of such impact, it is appropriate to award that the District meet and negotiate the impact of such personnel changes with the Association and cease and desist from failing to recognize the Association's rights to so represent the members of the bargaining unit through such negotiations. . . .

At an earlier point in the decision, the arbitrator expounded on the purpose of the impact negotiations:

> Since the undersigned arbitrator has already found that the District has failed to meet and negotiate with the Association concerning the impact of the personnel reassignments challenged herein, it would appear that such

> impact would clearly include any reduction or elimination of such benefits and professional advantages. Therefore, it may be assumed that the Maintenance of Benefits clause in Article XIX has been violated by the District's action and the extent of such violations, as well as the redress thereof, should be determined through negotiations between the parties regarding the impact of the personnel changes challenged in this proceeding.[4]

DISCUSSION

The issue before the Board is whether the ALJ was correct in reaching his conclusion that deferral to the arbitrator's award is inappropriate in this case because the award is repugnant to the purposes of EERA.[5] The Board has considered the question

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[4]Article XIX of the parties' agreement provides:

> The Board shall not reduce or eliminate any negotiable benefits or negotiable professional advantages which were enjoyed by teachers as of the effective date of this Agreement unless otherwise provided by the express terms of this Agreement.

[5]Section 3541.5(a) instructs that PERB may not:

> . . . issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration. However, when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not be necessary. The board shall have discretionary jurisdiction to review such settlement or arbitration award reached pursuant to the grievance machinery solely for the purpose of determining whether it is repugnant to the purposes of this chapter. If the board finds that such settlement or arbitration

of repugnancy in earlier decisions. Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81a; and Los Angeles Unified School District (1982) PERB Decision No. 218. Those opinions indicate that the policy of deferral is appropriately invoked in those situations where the Board may have reached a contrary legal conclusion or ordered a different remedy than did the arbitrator.

In Los Angeles, supra, for example, the Board dismissed the union's claim that the arbitrator's award was repugnant to EERA because he found that the union waived its right to contest the change in parking locations. Noting that the arbitrator's finding of waiver was based on his review of the contract language, bargaining history and past practice, the Board remarked:

> The possibility that this Board may have reached a different conclusion in interpreting the parties' agreement and the evidence does not render the award unreasonable or repugnant.

In contrast to the Los Angeles case, the circumstances at issue in Dry Creek, supra, caused the Board to conclude that

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> award is repugnant to the purposes of this chapter, it shall issue a complaint on the basis of a timely filed charge, and hear and decide the case on the merits; otherwise, it shall dismiss the charge. The board shall, in determining whether the charge was timely filed, consider the six-month limitation set forth in this subdivision to have been tolled during the time it took the charging party to exhaust the grievance machinery.

deferral was inappropriate. There, as in the instant case, the issue concerned the unilateral reduction of salaries. While acknowledging past Board decisions ordering resumption of the status quo to remedy bad faith negotiations, the arbitrator considered himself without authority to restore the teachers' salary cuts. The Board found that:

> . . . the remedy provided by the arbitrator is so deficient as to justify a finding that the award is repugnant to the purposes of the EERA.
>
> While the Board will not necessarily find an award repugnant because it would have provided a different remedy than that afforded by the arbitrator, it may well so consider an award which fails to protect the essential and fundamental principles of good faith negotiations.
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> PERB has ruled that unilateral alterations of existing wages, hours and enumerated terms and conditions of employment without affording the exclusive representative the opportunity to negotiate on such matters violate the Act. Beyond that, however, PERB has made it clear—and now reiterates—that good faith negotiations cannot and should not proceed until the status quo is restored. . . .
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> . . . [the arbitrator's] failure to supply such a remedy, if allowed to stand, would throw the parties negotiating relationship into an imbalance that would necessarily frustrate the Act's intent that negotiations proceed in good faith. It has been the consistent position of this Board that unilateral actions, such as those alleged here, inherently interfere with, restrain, and coerce employees in the exercise of their statutory representation rights as well as the rights of the employee organization. The arbitrator's remedy, which only directs that the parties enter into negotiations, would therefore require that the employees and their representative enter negotiations on

> the basis of first surrendering fundamental statutory rights to bargain in good faith. (Footnotes omitted.)

In our opinion, much the same could be said about the instant case. While his decision is not devoid of some ambiguity, at a minimum, the arbitrator clearly concluded that RTA requested to negotiate the effects of the personnel actions and the District failed to do so. While noting that the employees' negotiated benefits and professional advantages may have been reduced or eliminated as part of the impact of the personnel changes, his order only instructed that the District and RTA

> meet and negotiate to what extent the [employees] have lost wages or benefits as a result of the District's actions and attempt to agree upon a fair remedy for any such losses.

As was the case in Dry Creek, supra, this order only directs that the parties enter into imbalanced negotiations. Thus, to the extent that the arbitrator found the District's personnel actions to have unilaterally changed the employees' wages, such lost compensation and benefits should have been restored by order of the arbitrator rather than to direct that the parties somehow negotiate over the lost wages in an "attempt to agree upon a fair remedy . . . ."

In keeping with past Board practice, our conclusion that the arbitrator's award is repugnant to EERA does not rest on differing views of legal issues as yet undecided by the Board or on factual disagreements. Our decision today rests on the arbitrator's failure to order the District to restore employees'

salaries which he found to have been unilaterally altered by the District. In finding the arbitrator's award to be repugnant to the purposes of the Act, we do not order restoration of altered salaries but rely on the Board's normal case processing procedures. After an evidentiary hearing is conducted in Case No. LA-CE-2066, a PERB ALJ will then issue a proposed decision, which may include an appropriate remedy warranted by the established facts.

ORDER

After full review of the record before us in the instant case, we find the arbitrator's award to be repugnant to the purposes of the Educational Employment Relations Act and ORDER that the chief administrative law judge proceed to process the complaint issued on March 27, 1985 in Case No. LA-CE-2066.

Chairperson Hesse and Member Burt joined in this Decision.